

405 KAR 16:180. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.405, 350.435, 350.465, 30 C.F.R. Parts 730-733, 735, 816.57, 816.97, 917, 16 U.S.C. 668 et seq., 1531 et seq., 30 U.S.C. 1253, 1255, 1265, 33 U.S.C. 1344

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.57, 816.97, 917, 16 U.S.C. 668 et seq., 1531 et seq., 30 U.S.C. 1253, 1255, 1265, 33 U.S.C. 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities, and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those resources where practicable.

Section 1. General. (1) The permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and shall achieve enhancement of those resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;
2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;
3. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and
4. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes; and

(c) Avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

Section 2. Protection of Endangered and Threatened Species. (1)(a) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The operator shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(b) No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall

identify whether, and under what conditions, the operator may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

Section 3. Reclamation Strategies and Wildlife Enhancement Techniques. (1) Where fish and wildlife is to be a postmining land use, the permittee shall:

(a) Select plant species to be used on reclaimed areas on the basis of the following criteria: their proven nutritional value for fish or wildlife; their use as cover for fish or wildlife; and their ability to support and enhance fish or wildlife habitat after release of performance bonds; and

(b) Group and distribute plants in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(2) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(3) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife. (8 Ky.R. 1548; eff. 1-6-1983; 18 Ky.R. 3017; 3472; eff. 6-24-1992; Crt eff. 7-3-2018.)